IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2461 OF 2005

Shri Jayesh Mahendra Shah. ... Applicant

versus

The State of Maharashtra. ... Respondent

...

Mr.S.P.Kadam, for the Applicant.

Mr.K.V.Saste, APP for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

25th APRIL, 2005

P.C.:

1. Pursuant to order dated April 19, 2005, one Mr.Shivaji Jaivant Bhosale, Sub-Inspector of Police attached to Gadhinglaj Police Station, Dist.Kolhapur has appeared.

2. In so far as non-appearance and/or failure to give instructions to Public Prosecutor inspite of intimation of scheduled date(i.e.April

15,2005), is concerned, it is submitted that no intimation was received by the Gadhinglaj Police Station, where the offence is registered. It is incomprehensible that intimation sent by wireless, must not have reached to the concerned police station. According to the record maintained by the Office of the Public Prosecutor, intimation was forwarded on 13th April, 2005 during the working hours. Obviously, the wireless message must have reached the destination and the persons responsible for communicating the contents of the wireless to the concerned police station must have discharged their obligation. There is no reason to accept the bare statement made across the bar by the learned Public Prosecutor that the concerned police station did not receive intimation about the hearing of 15/4/2005. If that fact is correct, then there has been some lapse at the level of liason officer who is expected to communicate about the date of the hearing in time to the concerned police officer. Whereas, if the explanation is false, that is a serious matter. In any case, the matter needs to be examined by the Superintendent of Police, Kolhapur and steps

taken in that behalf be placed on record before this court within two weeks from today.

3. In so far as, failure to attend court proceedings on 19th April, 2005, affidavit has been filed by Shivaji Bhosale, sworn on 25th April, 2005, stating that Shri Anil R. Dabade, Asstt.Police Inspector was deputed with the relevant record and with due instructions to the Public Prosecutor who reached this court that day after 12 noon, by that time, the matter was already adjourned. Even this aspect be considered by the Superintendent of police, Kolhapur and correctness of the position be verified.

4. Heard the counsel for the parties.

5. Indeed the offence for which the applicant is arrested is serious offence. However, the applicant has been named merely on the basis of the statement of co-accused(Accused No.1) that he had received the offending four notes of denomination of Rs.1,000/- from the applicant. There is no evidence, atleast brought

to my notice, that the four notes which the applicant parted and in turn made over to Kupekar was the same currency which was received from the applicant. In other words, the applicant is arrested only on the basis of oral testimony of co-accused. That is not sufficient. In any case, it is a relevant fact which can be considered for bail. Besides, the co-accused No.1 has already been released on bail by the Lower Court, as investigation is complete and chargesheet has been filed. The applicant is therefore, entitled for bail on strict conditions, as no antecedents are reported against the applicant.

6. Hence, application is allowed on the following terms.

(i) The applicant is directed to be released on bail in connection with the C.R. NO.96 of 2004, registered with Gadhinglaj Police Station, on executing personal bond in sum of Rs.25,000/- with two local sureties in like amount.

(ii) The applicant shall not influence any prosecution witness nor tamper with prosecution evidence, in any manner, whatsoever.

(iii) The applicant shall co-operate for early disposal of the trial as condition for bail. In the event, the trial court is of the opinion that the applicant is responsible for delay in trial, the same be recorded in roznama and that can be the basis for cancellation of bail.

7. Although the application is disposed of on merits, however, it be placed under caption "directions" after two weeks to consider the action taken report to be submitted by the Superintendent of Police Kolhapur as referred to above.